
The State of Wisconsin

LEGISLATIVE AND CONGRESSIONAL
REAPPORTIONMENT
IN WISCONSIN

A Summary of the Law,
together with a
Chronology of Wisconsin Reapportionment
Since 1836

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On April 1, 1970, the people of Wisconsin participated in the 19th Census of Population of the United States. As this is written, no cumulative totals have been published showing the results of the census of the 72 counties of the state; however, it is already quite obvious that, once again, the southeastern Wisconsin triangle -- from Brown County to Rock and Kenosha Counties -- will have increased its relative share of the population of Wisconsin, and that the remaining area of the state will have a lesser relative share although its population may have increased slightly since 1960. The result is that all population-based election districts (congressional, legislative, supervisory and aldermanic) will have to be readjusted to adjust to the population shifts and to restore population equality among the districts of each type.

This research bulletin is addressed solely to the tasks of reapportioning congressional and legislative districts, tasks which are performed by the state Legislature. However, much of the reapportionment case law -- particularly that based on the interpretation of the "equal protection of the laws" clause of the XIVth Amendment to the United States Constitution resulting from the litigation of the 1960's -- applies with equal validity to the revision of supervisory and aldermanic district boundaries.

Summary of the Apportionment Law

Based on the Wisconsin Constitution which, for legislative districts, has required apportionment "according to the number of inhabitants" since 1848, and on the recent interpretations of the United States Constitution, the guiding principle of redistricting at all levels can be quickly summarized as follows:

There must be an honest and good faith effort to reduce to the lowest level possible the population differences among all districts of each type.

Neither the Wisconsin Constitution, nor the "equal protection of the laws" clause of the United States Constitution, recognizes a "minimal deviation" from average population which can be disregarded. Thus, the constitutionally required population equality has not been achieved as long as it is possible in congressional or legislative districting to reduce the population difference between 2 adjoining districts by the shifting of a county, town, village or ward. Moreover, if it is found that the election precinct continues as a valid unit of legislative apportionment under the Wisconsin Constitution, then population equality will not be achieved until even the shifting of individual precincts between adjoining senate and assembly districts can no longer reduce the population differences.

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On the basis of population estimates in various sources, it is likely that Wisconsin's population total resulting from the 1970 Census will represent a lesser relative share of the total United States population than it did in 1960 and that, as a result, the size of Wisconsin's delegation to the United States House of Representatives will by federal law be reduced from 10 to 9. This further complicates the already difficult task of congressional redistricting.

A similar 1-member reduction will have to occur in the size of the Wisconsin Assembly (from 100 to 99). This is true because, in making the apportionment, the Wisconsin Legislature is bound not only by the United States Constitution but also by all apportionment provisions of the Wisconsin Constitution which do not conflict with the supreme law of the land. Under the Wisconsin Constitution, senate districts must consist of whole assembly districts. The U. S. and the Wisconsin Constitution both require each senate district to contain substantially the same number of people as any other senate district, and each assembly district to contain substantially the same number of people as every other assembly district. As long as all assembly districts contain substantially equal population numbers, it is not possible to obtain senate districts of substantially equal population numbers if 32 of the senate districts contain 3 assembly districts each, and the 33rd contains 4 assembly districts.

For both the senate and assembly districts, the Wisconsin Constitution requires each district to consist of contiguous territory, to be compact in form, and to be "convenient" - presumably, to the voters residing therein.

As much as possible, county lines should be observed so as to give a reasonable basis to legislative and congressional districts. Since it is not likely that any one of Wisconsin's 72 counties will contain precisely the right population number to constitute one population ratio for assembly, senate or congressional districting, the first step should be a combining of counties into larger districts containing an almost precise population ratio or multiple of a population ratio. Once such districts have been identified, the internal districting can then follow town, village and ward lines (and, perhaps, precinct lines) with a view to population equality among districts.

There is no set pattern for the enactment of an apportionment law. In the majority of the cases, Wisconsin has reapportioned by the passage of 2 laws: the first to realign the congressional districts, and the second to revise state senate and assembly districts. However, in 1911, all 3 types of districts were redistricted in a single legislative act (Chapter 661, Laws of 1911), while 10 years earlier there had been 3 separate acts: Chapter 164, Laws of 1901, revised the assembly districts; Chapter 309, the senate districts; and Chapter 398, the congressional districts.

The apportionment must be enacted by the 1971 Legislature in time for the 1972 general election. In earlier decades apportionment had been held a continuing duty which, if not completed at the first session, could be completed at a later session. Resulting from the apportionment litigation in the 1960's, it is today unlikely that a state legislature would be given a 2nd chance, to try again at a session following the "first session after each enumeration made by the authority of the United States". Undoubtedly, the alternatives to prompt reapportionment by the Legislature would be apportionment by the courts or elections at large.

There has never been any question that Senate districts can cross county lines. For Assembly districts, the prohibition against the crossing of county lines was not so much in the wording of the Wisconsin Constitution as it was the result of the Constitution's interpretation by the Wisconsin Supreme Court in 1892. That rule, of doubtful validity under the Wisconsin Constitution from its inception, is in any case superseded by the recent interpretations in federal courts of the "equal protection of the laws" guarantee under the XIVth Amendment to the Constitution of the United States.

When the Wisconsin Constitution speaks of districting along "ward" lines, it has reference to both cities and villages. Thus, the building block of Wisconsin legislative districts are counties, towns, villages and cities. Within villages and cities, legislative districts would follow ward lines -- except that, in 1970, the villages in the State of Wisconsin no longer have wards. However, faced with a number of villages in which the populations exceed 10,000, the Legislature might consider establishing wards as a matter of state-wide concern in connection with reapportionment or, on the alternative, requiring villages of a certain population to lay out wards in the same manner as wards are required for 4th class cities.

The "precinct", mentioned in the Wisconsin Constitution, was characterized as an obsolete term in an 1880 case which had nothing to do with legislative apportionment. Since that case proceeded from the wrong premise -- that a constitutional precinct was a territorial unit with functions other than election administration -- its ruling is of doubtful applicability to legislative apportionment even though the 1880 case has been cited with approval in a number of subsequent legislative apportionment cases.

A Chronology of Wisconsin Reapportionment, 1836 to 1970

This bulletin combines, by date, brief descriptions of the laws, court actions and vetoes which have shaped reapportionment in Wisconsin from the creation of the Territory. For the decade of the 1960's, the listing includes the most significant federal court decisions which have had an influence on Wisconsin reapportionment or which will have a bearing on the reapportionment to be made in 1971. With one exception, the listing does not include the several acts of the Wisconsin Legislature, creating new counties, which stated that the territory included in the new county would remain a part of the legislative district to which it had been assigned by the most recent apportionment, until a new apportionment could be made along county lines. The exception concerns Chapter 259, Laws of 1959 -- the creation of Menominee County -- which was included because two years later a special apportionment act combined all of the new county into the same Assembly, Senate and Congressional district.

1836

The Wisconsin Territory was created on April 20, 1836. The population of the new Territory was 11,683. The United States Congress passed An Act establishing the Territorial Government of Wisconsin, 5 U.S. Stat. 10, which, in Section 4, set forth the method for the apportionment of the Territorial Legislature and, in Section 14, provided for the election at large of a "delegate" to the House of Representatives of the United States:

Sec. 4. And be it further enacted, That the Legislative power shall be vested in a Governor and a Legislative Assent-

bly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members ... whose term of service shall continue for four years. The House of Representatives shall consist of twenty-six members ... whose term of service shall continue two years. An apportionment shall be made, as nearly equal as practicable, among the several counties, for the election of the Council and Representatives, giving each section of the Territory representation in the ratio of its population, Indians excepted, as nearly as may be ... The first election shall be held at such time and place, and be conducted in such manner, as the Governor shall appoint and direct: and he shall, at the same time, declare the number of members of the Council and House of Representatives to which each of the counties is entitled under this act ... Thereafter ... the apportioning the representation in the several counties to the Council and House of Representatives, according to population, shall be prescribed by law ...

Sec. 14. And be it further enacted, That a Delegate to the House of Representatives of the United States, to serve for the term of two years, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as have been granted to the Delegates from the several Territories of the United States to the said House of Representatives. The first election shall be held at such time and place or places, and be conducted in such manner, as the Governor shall appoint and direct. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given to the person so elected.

1838

Chapter 18, Laws of the 1838 Special Session (approved June 23, 1838), established 17 "electoral districts" and apportioned the membership of the Territorial House of Representatives among these districts (the Council was not mentioned). The act remained inoperative because the Iowa Territory was separated from the Wisconsin Territory prior to the first election scheduled under the new act. For the creation of the Iowa Territory, see 5 U.S. Stat. 235.

1840

The population of the Wisconsin Territory, as enumerated in the 6th Census of the United States, has increased to 30,945. Based on the results of the census, the Territorial House of Representatives was reapportioned by Chapter 25, Laws of the 1840 Special Session (approved August 8, 1840). As in 1838, again the Council of the Territorial Legislature was not mentioned in the apportionment law.

1842

A law of the Territorial Legislature approved February 18, 1842 (published at page 47 of the 1841-42 Laws) provided for a special census and directed the

Governor to reapportion the Territory based on the results of the census and in compliance with specific guidelines set forth in the act. These guidelines established a working model of the "equal representation" method of legislative apportionment, as follows:

In making said apportionment, the Governor shall proceed in the manner following, viz.

1st. The whole number of representative population of the Territory, excluding soldiers and officers of the United States army, and Indians, not citizens, shall be divided by the number fifty-two, the whole number of units of representation, the quotient shall be the ratio, or the number of population entitled to an unit of representation.

2d. The representative population of each election district shall be divided by said ratio. The quotients shall be the numbers of units of representation in the whole Legislative Assembly assigned to such district, and the remainders shall be the fractions.

3d. The difference between the sum of the quotients and fifty-two, shall be made of the fractions, having regard to the size of the fractions and one unit of representation, shall be assigned to the district entitled thereto, for each fraction so taken, until the whole number of fifty-two is complete.

4th. In dividing the whole representation of the several election districts between the two branches of the Legislative Assembly, every district shall be secured at least one representative in each branch.

5th. From the whole number of units assigned to each district, one unit shall be taken for each member of the House of Representatives, and two units for each member of the Council apportioned to such district, until nothing remains in their apportioning. The weight of representation of every district in the Legislative Assembly, shall be divided as equally as it may be between the two branches.

1846

A law of the Territorial Legislature approved February 3, 1846 (published at page 24 of the 1845-46 Laws) revised the electoral districts (the new law called them "election districts") in the Territory of Wisconsin. It created 11 such districts, each consisting of whole counties. The Governor was by the law instructed to reapportion the members of the Council and the House of Representatives in accordance with the results of an 1846 special census and in compliance with the rules established by the 1842 law. A 12th election district, to consist of the County of Waukesha, was tentatively established by the law to become effective only if the residents of Waukesha voted for division from Milwaukee County (they did).

1847

A special census of the territory, held in anticipation of the deliberations of the Constitutional Convention and in preparation for statehood, established the population of the Territory at 210,546.

1848

In March of 1848, the people of Wisconsin ratified the new proposed Constitution by a vote of 16,799 to 6,384. The results evidenced little interest in the election; a year earlier, the first proposed Constitution had been rejected by the much larger vote of 14,119 to 30,231. The stage was set for Wisconsin statehood, approved by Congress on May 29, 1848.

The original Congressional apportionment of the State of Wisconsin, enacted as Section 10 of Article XIV of the Wisconsin Constitution, divided the State into 2 Congressional districts. Mason C. Darling of Fond du Lac and William P. Lynde of Milwaukee were elected from the 2 districts and took their seats on June 9 and June 5, respectively, in 1848.

The original division of the State of Wisconsin into Senate and Assembly districts was enacted by Section 12 of Article XIV of the Wisconsin Constitution. It created a Senate of 19 members and an Assembly of 66 members. The allocation which, as proposed, had included a 64-member Assembly, had been worked out by the Constitutional Convention's Committee on Legislative, Executive and Administrative provisions on the basis of the December 1847 state census and in compliance with the 1842 rules. From the statistical evidence, it appears that the 1842 rules -- including a 2-for-1 ratio between Senators and Assemblymen -- had been applied even though the aim of the new plan was a 3-for-1 relation between Senate and Assembly (20 Senators; 60 Assemblymen). The constitutional apportionment was, therefore, an "equal representation" apportionment rather than an equal population districts plan. The "equal representation" approach continued to be the basis of apportionment until 1866.

Section 7 of the Statehood Act (9 U.S. Stat. 233) provided that "from and after" March 4, 1848, the State of Wisconsin would be entitled to 3 U.S. Representatives. The 3-district division of the state was enacted by Chapter 11, Laws of the 1848 State Legislature (approved June 29, 1848). Charles Durkee of Kenosha, Orsamus Cole of Potosi and James Duane Doty of Menasha were elected and took their seats in Congress on December 3, 1849, at the beginning of the Thirtieth Congress.

1850

The 7th Census of the United States established the population of the State as 305,391. This represented an increase for the decade of 274,446 or 886.9%. According to the 1850 Census, only 9.4% of the population of Wisconsin was classified as urban. The population increase was the largest percentage increase during any census decade although, in actual numbers, it has been surpassed many times.

1851

On March 17, Governor Nelson Dewey vetoed 1851 Assembly Bill 381, the first legislative apportionment bill ever considered by a Wisconsin state legislature. The Governor's stated reason for the veto was population inequality among Senate and Assembly districts within a single county (Milwaukee) as well as inequalities among Senate districts in other parts of the

state. It appears, that Governor Dewey's veto applied to the proposed apportionment, based on the "equal representation" principle established in 1842, the standards of "equal population" districting commonly advanced in the apportionment debates of the 1960's.

1852

Wisconsin had a new Governor, Leonard J. Farwell. Apparently, he had no objection to the principles of "equal representation" apportionment. Chapter 499, Laws of 1852, was approved by Governor Farwell on April 19 to reapportion the Senate and Assembly. The provisions of the new law were identical to the bill vetoed a year earlier by Governor Nelson Dewey. Membership was increased to 25 in the Senate and to 83 in the Assembly. The new districts gave representation to the recently created counties (primarily in the east-central part of the state), and increased the combined Senate-Assembly representation of some southern counties. One assembly district, consisting of Waushara County and part of Marquette County, crossed county lines. The number of every Senate district was changed, although odds and evens were observed. In 3 of the 6 new Senate districts, initial elections were held for 1/2 terms.

1855

Article IV, the "Legislative" article of the Wisconsin Constitution, as originally ratified provided annual terms for Assemblymen and biennial terms for Senators. Apportionment was to occur every 5 years: following the federal census in the years ending in "0", and following each state census in the years ending in "5" beginning in 1855. Chapter 71, Laws of 1855, set up the mechanics for the first state census. It reported a state-wide population total of 552,109.

1856

Chapter 109, Laws of 1856, again increased the membership of the 2 houses: to 30 in the Senate and to 97 in the Assembly. Both the new northwestern counties, and the established southeastern counties, gained representation. The law reflected the effect of Chapter 27, Laws of 1852, which had transferred the string of 5 southernmost Dodge County towns to Jefferson County; these towns (including the City of Watertown), are shown as part of the Jefferson County assembly districts. Apparently, however, the Dodge-Jefferson territorial transfer was never implemented and was repealed by Chapter 216, Laws of 1861. Meanwhile, 3 of the Jefferson County Assembly districts, and the 14th Senate district, straddled the county line. Of the 5 new Senate districts, 3 held initial elections for 1/2 terms; this included the new 28th and 30th which, together, comprised the territory of the old 19th.

Chapter 144, Laws of 1846, attached the Town of Primrose to the 4th Assembly District of Dane County to correct an apparent omission in Chapter 109 of that year. The Town of Primrose had been in existence since 1849.

1860

The 8th Census of the United States showed the Wisconsin population as 775,881, an increase of 470,490 or 154.1% over the 1850 total. The percentage of population classified as urban had increased to 14.4%.

1861

Chapter 216, Laws of 1861, ended the membership expansion in both houses of the Wisconsin Legislature, with the Assembly (100) and the Senate (33) each reaching the maximum number allowed under the Constitution. The Counties of Door, Oconto and Shawano were together made an Assembly district, the first "rowboat" district in Wisconsin legislative apportionment. The description of the 18th Senate District listed the "south ward of the village of Waupun" as one of the component parts of the district, indicating that in the language usage of the Constitution drafters the word "ward" in the apportionment provisions might have been considered to cover all incorporated village and city territory.

There had been no Congressional reapportionment following the 1850 Census. Based on the results of the 1860 Census, Wisconsin was apportioned 6 Congressmen and the state was redistricted by Chapter 238, Laws of 1861.

The first judicial interpretation of the apportionment provisions of the Wisconsin Constitution came in Slauson et al. v. City of Racine, decided March 12. The case held that, by requiring apportionment following each census, the Constitution did not impliedly prohibit incidental changes resulting from changes in the boundaries of "the towns, cities or counties of which such districts may be composed"; 13 Wis. 398.

1862

Two discrepancies occurred in the description of Dodge County districts in the 1861 act. One, the apparent omission of the Town of Trenton -- it was correctly shown as one of the component territories in the Dodge-2 Assembly district but failed to be listed in the description of the 18th Senate District -- was corrected by Chapter 72, Laws of 1862. The other -- the omission of the "south ward of the Village of Waupun" from the description of the Dodge-3 Assembly district -- remained uncorrected until 1865.

In Green County, Chapter 198, Laws of 1862, moved the town of Decatur from the first to the second Assembly district in the county. As the result, the county was divided into 2 geographically equal parts, but the act undoubtedly violated the rule of having only one apportionment in each census period.

1865

The "south ward of the village of Waupun", correctly shown as one of the component parts of the 18th Senate District since the 1861 apportionment, was finally added -- by Chapter 39, Laws of 1865 -- to the territorial description of Assembly district Dodge-3.

According to the state census held in 1865, Wisconsin's population had increased to 368,937. The census had been ordered by Chapter 471, Laws of 1865.

1866

The reapportionment of the Wisconsin Legislature by Chapter 101, Laws of 1866, was the first reapportionment in which the Legislature could no longer go the easy route of increasing the number of legislators so as to assure each established area that it would not lose representation. Instead, the apportionment ratio had to be increased so that, in general, the west-central

portion of the state, and Milwaukee County, gained representation while the southeastern part of the state lost it. The 1866 apportionment was also the last apportionment in which the method of "equal representation" apportionment -- basing the representation equality on the total representation assigned an area between the 2 houses, rather than on equal population districts in each house -- was consistently applied to the entire state-wide apportionment.

1867

Chapter 146, Laws of 1867, moved the Brown County Town of Bellevue from the Second to the First Assembly District of Brown County. Like Chapter 198, Laws of 1862, this seems to have been an afterthought to the apportionment made a year earlier which would seem to conflict with the constitutional rule of making only one apportionment per census period.

Enrolled Joint Resolution 4, approved February 13, 1867, notified the United States Congress of the Wisconsin Legislature's ratification of the XIVth Amendment to the Constitution of the United States.

1870

Increasing 278,789 persons or 35.9% during the Civil War decade, Wisconsin's population, as shown by the 9th Census of the United States, now totalled 1,054,670. Only 19.6% of the population were as yet classified as urban.

1871

The 1871 legislative apportionment, under Chapter 156, Laws of 1871, contained a number of innovations. Several Assembly districts crossed county lines, including one Assembly district consisting of Shawano County in combination with parts of both Outagamie and Waupaca Counties; the remainder of Waupaca County was made an Assembly district by itself while the remainder of Outagamie County was combined with Calumet County to form an Assembly district. Part of Brown and Kewaunee Counties were combined into an Assembly district. The City of Watertown, which straddles the Dodge-Jefferson County line, was made an Assembly district. All Senate districts were renumbered although the Senate districts which had been given an odd-number under the preceding apportionment, and thus contained hold-over Senators at the time of the 1871 election, were all assigned odd numbers under the new numbering scheme. The 21st Senate District, consisting of Marathon, Oconto, Shawano and 1/3 of the population (2/3 of the area) of Outagamie County, contained nearly a quarter of the state's land area, including all of Wisconsin north of today's northern boundaries of Wood, Portage and Brown Counties.

Chapter 157, Laws of 1871, corrected an apparent drafting error in the 1871 apportionment act by listing the 6th Ward of the City of Oshkosh as part of the territory constituting the Third Assembly District of Winnebago County.

1872

Chapter 48, Laws of 1872, redistricted Wisconsin into 8 Congressional districts. It seems probable that the publication of the results of the 1870 Census, and Congress' subsequent enactment of a reapportionment law, had occurred too late to permit redistricting in the 1871 Session. In any case, the

delay made no difference: published on March 9, 1872, the new apportionment was implemented sufficiently early to apply to the 1872 Congressional elections.

Chapter 62, 1872 Private and Local Laws, abolished the Town of Eaton in Monroe County. That county contained 2 Assembly districts under the 1871 apportionment. Conformably to the 1861 Slauson decision the Legislature, by Chapter 70, Laws of 1872, revised the boundary description for the 2 Assembly districts so that they followed the new town lines. This was an optional change neither required nor prohibited by the Constitution at that time although, in later years, the Constitution has been interpreted as prohibiting the changing of legislative district lines as the result of municipal annexations or ward line changes.

1875

The 3rd state census was arranged by Chapter 201, Laws of 1875. Wisconsin's population was found to have increased to 1,236,729.

1876

The legislative apportionment under Chapter 343, Laws of 1876, as the result of the change-over from "equal representation" apportionment to "equal populations" districting, for the first time since statehood increased the number of Senate districts allocated to Milwaukee County (from 2 to 3). Dane County, allotted 2 Senate districts but only 3 Assembly districts, was the last example of equal representation apportionment; in all other cases, Senate districts now contained at least 2 and not more than 4 Assembly districts. A part of Buffalo County was combined with Pepin County to form an Assembly district, and the Dodge-Jefferson City of Watertown remained an Assembly district. The combination of Door, Kewaunee, Oconto and Shawano Counties into the First Senate District created a rowboat district which was to continue, in some form, for 45 years (it was abolished in 1921).

1880

Based on the results of the 10th Census of the United States, Wisconsin's population had increased to 1,315,497. This represented an increase of 260,827 (only the great depression of the 1930's led to a lesser decennial increase in the population of Wisconsin) or 24.7%. Nearly 1/4 of the population of Wisconsin (24.1%) was now classified as urban.

1881

1881 Senate Bill 253, to reapportion Wisconsin's Senate and Assembly districts, was vetoed by Governor William E. Smith for the unexpected reason that the name of a town (the Town of Ridgeway in Iowa County) had been inadvertently omitted in the description of an Assembly district. It was a strange argument inasmuch the Second Assembly District of the county was properly described, and the First Assembly District, without the missing Town of Ridgeway, would have consisted of 2 noncontiguous parts separated by the entire length of the Town of Ridgeway (at the time, its territory appears to have included also that of today's Town of Brigham). Said Governor Smith:

It is well known that similar errors have occurred in previous apportionments, but it is believed that these omissions

were not brought to the attention of the governor until after the bills had been approved, and consequently the action of my predecessors upon such bills cannot be accepted as establishing a precedent for my guidance in this case. The question, therefore, comes up for determination upon its merits. The argument against the validity of the bill is that if the legislature, whether by accident or design, can omit or include one town in its apportionment, it can omit two towns, or an entire county, or other portion of the state, and thereby practically disfranchise a portion of the people by taking from them their right of representation in one or both houses of the legislature. I am unable to find any sufficient answer to this objection, and must therefore concur in the opinion that the bill is unconstitutional.

Senate Bill 216 of the same year, relating to Congressional districts, was indefinitely postponed. The bill had been drafted in anticipation of Congressional passage of a reapportionment bill increasing Wisconsin's membership in the U. S. House of Representatives from 8 to 9; apparently, Congressional action came too late to complete this task at the 1881 Session.

In November of 1881, the people of Wisconsin approved a constitutional amendment providing for biennial sessions of the Legislature, 2-year terms for Assemblymen and 4-year terms for state Senators. The amendment was ratified by a vote of 53,532 "for" the proposition with only 13,936 voting "against".

1882

The 1882 Legislature, by Chapters 242 (Senate and Assembly) and 244 (Congress), Laws of 1882, implemented the apportionment proposals which had failed in 1881. Based on the 1881 experience, Chapter 242 included a provision to cover against inadvertent omissions: "If any county shall be omitted by this act, it shall be attached to and form a part of the assembly and senate districts adjoining, having the smallest population."

1885

The biennial sessions amendment to the Constitution had done nothing about the state census requirement. A state census was held in 1885 on the basis of Chapter 161, Laws of 1885. The census counted 1,563,423 residents in the state. The results were published too late for legislative action in the 1885 Session and, as the result of the biennial sessions amendment, no regular session was scheduled for 1886. Thus, the apportionment based on the 1885 state census was to occur in 1887, only 4 years prior to the date on which a new apportionment would have to be made based on the results of the 1890 federal census. Given 4-year terms for Senators, a new apportionment would thus apply to only a single set of Senators and would, as soon as it was fully implemented state-wide, be superseded by a new legislative apportionment.

1887

The apportionment of the Senate and Assembly by Chapter 461, Laws of 1887, marks the most extensive cross-county lines districting actually used in Wisconsin legislative elections. Five years later, the practice was prohibited as the result of the Cunningham cases' interpretation of the Wisconsin

Constitution. In each of the following 2-county combinations, there was a minimum of 3 Assembly districts with the middle district straddling the county line: Green-Lafayette, Shawano-Waupaca, Outagamie-Winnebago, and Kewaunee-Manitowoc. In every case, county line crossing was confined to a pair of counties (in other words, no Assembly district consisted of parts of 3 counties).

In the 1887 apportionment, there seems to have been a real effort to reunite in Senate districting those counties which had been split in Assembly districting; thus, the Counties of Green and Lafayette were combined into a Senate district, as were the Counties of Shawano and Waupaca and of Kewaunee and Manitowoc. On the other hand, the City and Town of Menasha, combined with parts of Outagamie County into an Assembly district, was not reunited with the rest of Winnebago County in Senate districting.

Counties split internally for Assembly districting (but, without crossing county lines), were in several instances divided in Senate districting so that Senate districts crossed county lines: Marathon County was partly in the 9th and partly in the 21st Senate District; Waukesha County was partly in the 23rd and partly in the 33rd Senate District; and Fond du Lac County was split between the 18th and 20th Senate Districts.

While the apportionment, on the whole, appears to have been a good faith effort to achieve population equality among districts, there appear to have been at least 2 instances in which overrepresentation in one house was consciously balanced against underrepresentation in the other. Racine County, which had been a multi-Assembly district county from the beginning of the state, was reduced to a single Assembly district but remained a Senate district. At the same time, all of Dane County was included in a single Senate district although the county contained 4 Assembly districts. The 9th Senate District, containing 4 Assembly districts of low population, stretched from Green Lake County through Waushara and Portage Counties into the western one-half of Marathon County.

Two days after the 1887 reapportionment act was approved on April 12, the Governor approved Chapter 496, Laws of 1887, which altered the division of towns between the 2 western Assembly districts of Dane County.

1890

The 11th Census of the United States showed that Wisconsin's population had, during the decade of the 1880's, increased by 28.7% or 377,833 people, and its urban population from 24.1% of the state's total population to 33.2%. The total population was now 1,693,330. In the November election, the state elected its only Democratic Governor from 1876 to 1933, George W. Peck; a Democratic United States Senator, William F. Vilas; retired 6 of the 7 Republicans in its 9-member delegation to the U.S. House of Representatives; changed the composition of the state Senate from 6 Democrats, 24 Republicans, 2 Union Labor and 1 Independent to 19 Democrats and 14 Republicans; and altered the Assembly lineup from 29 Democrats and 71 Republicans to 66 Democrats, 33 Republicans, and 1 Union Labor.

1891-92

Both Congressional districts and state legislative districts were revised on the basis of the 1890 Census. The number of Congressional districts

increased from 9 to 10; the new districts were enacted by Chapter 398, Laws of 1891. For the first time, Wisconsin had a Congressional district of less than a whole county: the southern one-half of Milwaukee County became a Congressional district by itself.

Legislative reapportionment became the subject of extended litigation. The first revision of state Senate and Assembly districts based on the 1890 Census was invalidated in State ex rel. Attorney General v. Cunningham, 81 Wis. 440, decided on March 22, 1892. The second revision, enacted in a special session, was invalidated in State ex rel. Lamb v. Cunningham, decided September 27, 1892. The third proposed revision apparently was not challenged; enacted October 27, 1892, it was made to apply to the legislative elections held on November 8, 1892.

Chapter 482, Laws of 1891, the apportionment invalidated in the first Cunningham case, contained more Assembly districts across county lines than any of its predecessors, yet failed to achieve substantial population equality among districts. In the 3-county combination of Green, Iowa and Lafayette, 2 of the 4 Assembly districts crossed county lines; Lafayette County was split and its western one-half combined with parts of Iowa County while its eastern one-half was combined with parts of both Iowa and Green Counties. A similar split was made in Walworth County, both the northern and the southern halves of that county were combined with parts of Rock County. In each of the following 2-county combinations, 3 districts were established with the middle district straddling the county line: Pierce-St. Croix, Marathon-Shawano, Portage-Waupaca, and Monroe-Vernon; in addition, another piece of Monroe County was attached to the Juneau County Assembly district. A part of Trempealeau County was combined with Jackson County to form an Assembly district. The western towns of Waukesha County were combined into an Assembly district with the southeastern one-quarter of Dodge County, and the center section of Waukesha County, beginning at the Walworth County line, was combined with the southeastern one-half of Washington County. Part of Columbia County was attached to the Marquette County Assembly district, and a few towns of Winnebago County were made part of the Adams-Waushara Assembly district.

In the first Cunningham case, the Wisconsin Supreme Court established the principle — observed until the present day — that Assembly districts cannot cross county lines. Instead, an Assembly district can consist of a single county or several counties in combination, or a single county can internally be divided into several Assembly districts.

The apportionment made by Chapter 1, First Special Session of 1892, was invalidated in the second Cunningham case because of the large population differences among the districts. The largest Senate district (17th; Green and Rock Counties; 65,952) consisted, at 129.0% of the 51,117 population norm, of 4 Assembly districts while the smallest Senate district (4th; 60.1%; 30,732) consisted of only 2 Assembly districts in Milwaukee County. In the Assembly, populations varied from 148.9% of the 16,868 population norm (Vernon; 25,111) to 51.1% (Florence-Forest-Oneida; 8,626).

The apportionment made by Chapter 1, Second Special Session 1892, was approved only 2 weeks prior to the general election but was applied to it. All Assembly districts observed county lines. Of the 33 Senate districts only one, the 24th, contained 4 Assembly districts; all others contained 3 Assembly districts each. Eleven Senate districts — the 7th, 13th, 16th, 17th, 21st,

22nd, 23rd, 24th, 27th, 28th and 33rd — crossed county lines and contained part of one county in combination with all or part of another county. The population deviation range for Senate districts (a spread of 68.9% in the invalidated act of the First Special Session) had been narrowed to 43.0%: the smallest Senate district (the 30th) contained 42,142 persons or 82.4% of the population norm and the largest (the 31st) contained 64,119 or 125.4% of a population norm. In the Assembly, the spread had been narrowed from 97.8% to 81.2%; the largest district was Portage County with 24,798 (147.0%) and the smallest was Milwaukee-12 with 11,107 (65.8%) consisting of the 14th Ward of the City of Milwaukee.

As concerns population equality among districts, the precision of the 1892 legislative apportionment was not again equalled until the Rosenberry apportionment of 1951 and the Supreme Court apportionment of 1964.

1895

The state census established the population of Wisconsin as 1,937,915. Publication of the census results came too late for the 1895 regular session; as shown by its foreword, the census was published after January 1, 1896. The procedures for the 1895 state census followed Chapter 45 of the Wisconsin Statutes of 1889; this chapter was the result of the codification of the state census law enacted 10 years earlier.

1896

The Legislature was convened in special session to revise the legislative districts on the basis of the 1895 state census. The new apportionment was enacted as Chapter 1, Laws of the 1896 Special Session. In the new apportionment, the 20th, 21st and 27th Senate Districts each contained 4 Assembly districts, while the 10th and 13th Senate Districts only contained 2 Assembly districts each.

1900

The beginning of the new century showed that Wisconsin's population now exceeded 2 million. According to the 12th Census of the United States, it was 2,069,042; an increase of 375,712 or 22.2% during the decade. Urban population had increased to 38.2% of the state's total.

1901

The Wisconsin apportionment in the U.S. House of Representatives increased from 10 to 11. Assembly, Senate and Congressional districts were revised by 3 separate acts. Chapter 398, Laws of 1901, which created the new Congressional districts, established 2 districts within Milwaukee and Waukesha Counties. The 4th Congressional District continued to consist of the southern one-half of Milwaukee County. The new 5th Congressional District, consisting of Waukesha County and the northern one-half of Milwaukee County, had roughly the same outline as today's 9th Congressional District.

To devise a plan of legislative apportionment, the 1901 Legislature created a joint committee consisting of 7 Senators and of 13 Assemblymen. This committee divided itself into 10 subcommittees corresponding to the state's 10 Congressional districts, to propose to the whole committee plans for Senate and Assembly districts within the area assigned to each subcommittee. Each proposed

district was submitted to a vote of the whole committee before it was incorporated into the overall plan (1901 Senate Journal, pp. 454-460). Having decided on the overall Assembly plan, the committee created 2 subcommittees, each consisting of one Senator and 2 Assemblymen, to review the proposed internal divisions within multi-Assembly district lines. The committee's recommendations were offered in both houses on March 15, 1901, and the Assembly version of the bill providing for Assembly reapportionment was approved by the Governor on April 12 as Chapter 164, Laws of 1901. With the Assembly reapportioned, the special joint committee now developed a Senate redistricting plan, which was introduced in both houses on May 1, 1901, just 2 weeks prior to the end of the session. The Senate version of that plan was passed by both houses within the same week, and approved by the Governor on May 6 as Chapter 309, Laws of 1901.

In the Assembly, Portage, Sheboygan and Walworth Counties each lost one district while Marinette and Milwaukee Counties picked up an additional district and Ashland County and Lincoln County each gained Assembly district status. In the Senate, the careful population equality approach of the 1892 apportionment was all but forgotten. All Senate districts now consisted of whole counties; the 10th, 13th and 28th Senate Districts each contained only 2 Assembly districts while the 1st, 24th and 27th Senate Districts, and one of the Senate Districts in Milwaukee County, contained 4 Assembly districts each.

The case of State ex rel. Hicks v. Stevens, 112 Wis. 170, decided November 29, 1901, attacked the creation of Gates (Rusk) County by Chapter 469, Laws of 1901, because the new county crossed the Assembly district lines established by Chapter 164. The Wisconsin Supreme Court (at p. 180) held that it was proper for an Assembly district to consist of part of the old and all of the new county:

... A county, as such, has no representation in the assembly. Its chief value to its people is the right to arrange and handle local affairs, largely independent of the rest of the state. The right to representation in the assembly rests rather upon residence in an assembly district than in any given county, so that no right of the individual as a resident of a particular locality is in the least affected by the circumstance that the south boundary line of Gates county divides the Second district of Chippewa county.

1905

In compliance with Chapter 45 of the Wisconsin Statutes of 1889, a state census was held. The tabulation showed the number of Wisconsin residents as 2,228,949.

1907

The Legislature created a special joint committee on apportionment consisting of 5 Senators and 9 Assemblymen. On June 14, the committee introduced Assembly Bill 1018, to revise Wisconsin's Assembly districts, and Assembly Bill 1019, revising Wisconsin's Senate districts. Six days later, the same committee -- with one dissenting vote -- recommended both bills for indefinite postponement, and on June 26 both bills were killed. The action

followed by one day the Assembly approval of 1907 Senate Joint Resolution 18, which initiated the constitutional amendment process for the repeal of the state census and, with it, of the requirement to reapportion in mid-decade.

1909

The Legislature gave second consideration approval to the proposed constitutional amendment for the repeal of the state census and the mid-decade reapportionment requirement; 1909 Senate Joint Resolution 35.

1910

The 13th Census of the United States showed that Wisconsin's population now numbered 2,333,860. The rate of increase for the decade had been 12.8%; the absolute increase was 264,818. Forty-three per cent of the state's population were now classed as urban.

In the November election the state census provision of the Wisconsin Constitution was repealed. There was little interest in the proposition; 54,932 voted for the repeal and 52,634 voted against it, but 319,522 votes were cast in the gubernatorial race at the same election.

1911

Governor Francis E. McGovern, whose home was in Milwaukee County, vetoed 1911 Assembly Bill 1065 - the first bill to combine into one document the reapportionment of Assembly, Senate, and Congressional districts - because of population differences among Assembly districts in the City of Milwaukee, and because of the geographic configuration of Senate districts in the same county. Within one week after the veto, the Legislature enacted, and the Governor approved, the same state-wide reapportionment plan (but changed inside Milwaukee County to satisfy the Governor's objections) as Chapter 661, Laws of 1911, the only apportionment act ever to combine all 3 district types into one document.

Wisconsin retained 11 Congressional districts. For the first time, the 1911 act established 2 Congressional districts wholly within Milwaukee County. The Assembly reapportionment affected mainly multi-Assembly district counties. Eau Claire, Rock and Waupaca Counties each lost a district, and Milwaukee County gained all 3 (bringing its total to 19). Milwaukee County gained a 6th Senate district.

1912

The new ward lines of the City of Milwaukee enacted in June of 1911 were challenged in State ex rel. Neacy v. Milwaukee, 150 Wis. 616, because they ranged in population from 9,238 to 19,517 in violation of Chapter 436, Laws of 1901, which had required such wards to be made "as nearly equal in population as may be". The facts were not disputed. The Supreme Court held that the "question of the division of a city into wards is a legislative question" and that the subsequent use of the Milwaukee wards in the state-wide apportionment enacted by Chapter 661, Laws of 1911, had cured any defect resulting from a possible conflict with the 1901 law.

1915

Chapter 382, Laws of 1915, was a revision bill. It made no changes in the descriptions of the Assembly, Senate and Congressional districts, but revised their placement in the Wisconsin Statutes. Since that time, the Congressional districts have been described in Chapter 3 of the Statutes, and the legislative districts in Chapter 4.

1920

The 14th Census of the United States was the last to show the majority of Wisconsin's population (52.7%) as rural; 47.3 were now urban. During the decade the population had increased by 298,207 (12.8%) to 2,632,067.

1921

By 1921 Senate Joint Resolution 15, the Legislature set up a committee of 5 Senators and 11 Assemblymen (one from each Congressional district). The resolution began with the words "Whereas, This legislature is required by law to reapportion congressional and legislative districts according to the 1920 census"; however, it appears that no recommendation was made for Congressional redistricting.

Chapter 470, Laws of 1921, revised the Senate and Assembly districts, Kenosha, Racine and Milwaukee Counties each gained a district; the losers were Jefferson County (from 2 to 1), Winnebago County (from 3 to 2), and Green Lake and Waushara Counties (combined into a 2-county Assembly district).

Section 87 of Chapter 590, Laws of 1921, added to the description of the Third Assembly District of Dane County the names of the Villages of Blue Mounds and Cross Plains. This was part of a Revisor's correction bill.

1928

A decision by the Wisconsin Supreme Court in that year -- State ex rel. Witkowski v. Gora, 195 Wis. 515 -- held that a "ward" is a local geographical subdivision of the city or village. The case is important to legislative apportionment only inasmuch as the word "village" is not mentioned in the rule that Assembly district boundaries must follow "county, precinct, town or ward lines"; if a village is considered to be composed of wards (in most cases, a single ward), then Assembly district boundaries can follow village lines also.

1929

Chapter 235, Laws of 1929, resulted from an effort of the Assembly Committee on Municipalities to update the descriptions of the several Congressional, Senate and Assembly districts for name changes of municipal corporations, and new municipal incorporations, which had occurred since the 1921 apportionment.

1930

The 15th Census of the United States showed that the population balance of Wisconsin had shifted from predominantly rural to predominantly urban; the latter classification now applied to 52.9% of the state's population of 2,939,006. During the decade, the state's population had increased by 11.7% or 306,006. Although Wisconsin continued to rank 13th in population in the United States (it held this rank from 1900 until it dropped to 14th in 1950 and 15th in 1960), other parts of the country experienced population increases at a faster rate. Wisconsin, for the first time in its history, was slated to lose one member of its U.S. House of Representatives delegation (from 11 to 10).

1931

Introduced early in the 1931 Session, Assembly Joint Resolution 5 called for the creation of a joint committee on reapportionment; a version of the proposal finally received Senate concurrence on April 30 to create a joint committee "on the reapportionment of congressional districts" consisting of 5 Senators and 11 Assemblymen. Meanwhile, 1931 Senate Joint Resolution 50, received concurrence on April 23. It created an identically composed committee for the creation of a joint committee "on legislative reapportionment".

The Joint Committee on Congressional Reapportionment offered its proposal on June 19 as 1931 Senate Bill 411 and on June 20 as 1931 Assembly Bill 998. The 1931 Session ended on June 27, and on that date the Joint Committee on Legislative Reapportionment offered 1931 Assembly Bill 1006 for the revision of legislative districts. The session was over, and no action was taken on reapportionment.

Governor Philip F. LaFollette called a special session to begin on November 24, and to deal with 24 enumerated subjects. Item 14 of the enumeration was "to enact legislation to redistrict the Congressional Districts of this State, and also the Assembly and Senatorial Districts of this State, in accord with the census of 1930.

Chapter 27, Laws of the 1931 Special Session was the legislative districts bill. It did not reapportion; the distribution of Senate and Assembly seats among the counties remained the same. Within the multi-district counties, however, the act did make changes in district lines and recorded the most recent municipal incorporations.

Chapter 28, Laws of the 1931 Special Session, redistricted the Congressional districts and reduced their number from 11 to 10. Milwaukee County retained 2 Congressional districts (the dividing line was changed); thus, the reduction was really a reduction from 9 to 8 districts in that part of Wisconsin outside of Milwaukee County.

1932

The 1931 legislative redistricting act was attacked in State ex rel. Bowman v. Dammann, 209 Wis. 21, decided October 11, 1932. The court agreed that in 3 instances it appeared that the Legislature could have accomplished a fairer apportionment but found, nevertheless, that the act was constitutional, holding that "every presumption in favor of the validity of a reapportionment act and the good faith and fairness of the legislature should be indulged in".

1940

The 16th Census of the United States showed the smallest 10-year Wisconsin population increase in the history of the state, 6.7% or 198,581 people. The total population was now 3,137,587, and the urban percentage had risen to 53.5%.

t+1

1941

1941 Senate Joint Resolution 11 created a 5-member (2 Senators, 3 Assemblymen) Joint Committee on Reapportionment, and instructed it to "report its findings to the 1941 legislature". The appointments to the committee were made on the last day of the session and the 1942 Blue Book (p. 259) notes that no report was made.

Chapter 205, Laws of 1941, added the 21st Ward of the City of Green Bay to the First Assembly District of Brown County. Apparently, this ward consisted of territory annexed to the City of Green Bay between 1920 and 1930; in the 1931 apportionment, it had been described as a part of the Second Assembly District of Brown County (thus, in that county, the division between the 2 Assembly districts in 1931 remained unchanged). With the transfer, the First Assembly District of Brown County once more contained the entire City of Green Bay.

1943

1943 Senate Joint Resolution 55, and 1943 Assembly Joint Resolution 79, both proposed to create joint committees on reapportionment; both were rejected in the Assembly. There was no further attempt to initiate state-wide Wisconsin reapportionment based on the 1940 Census of Population.

Chapter 79, Laws of 1943, was a correction bill for the purpose of updating the district descriptions of Congressional, state Senate and Assembly districts in line with recent municipal annexations and incorporations. Similarly, Chapter 116, Laws of 1943, revised the description of Douglas County Assembly districts to reflect new ward lines in the City of Superior.

1945

Chapter 337, Laws of 1945, revised the description of Kenosha County Assembly districts to reflect the new ward lines in the City of Kenosha.

1946

In State ex rel. Martin v. Zimmerman, 249 Wis. 101, the attempt was made to declare the 1931 reapportionment act unconstitutional because of population shifts since the law was enacted. The Wisconsin Supreme Court held that, although the 1941 Legislature had not fulfilled its constitutional duty to reapportion, the courts had no way to force a coordinate branch of government to comply with its constitutional duties. Rather, the court declared that the 1931 apportionment would remain "in force and effect" until a new one is enacted by the Legislature.

1948

In their state platforms for the 1948 November elections, both of Wisconsin's major political parties pledged to take reapportionment action.

1950

The 17th Census of the United States established the Wisconsin population as 3,434,575. This represented an increase of 802,499 since the 1920 Census which had been the basis for the legislative inter-county apportionment then in effect. For the decade of the 1940's, the increase had been 296,988 or 9.5%. The urban share of the state's population had increased to 57.9%.

On July 17, the Wisconsin Joint Legislative Council (the interim research arm of the Legislature) created a Reapportionment Committee consisting of 2 Senators, 3 Assemblymen, and 3 public members. The committee became known as the "Rosenberry Committee" after its Chairman Marvin B. Rosenberry, a former chief justice of the Wisconsin Supreme Court. Apparently, the Rosenberry Committee did not address itself to Congressional redistricting. Its recommendations for legislative reapportionment were submitted to the 1951 Legislature in Volume IV of the 1950 Report of the Legislative Council.

1951

Chapter 728, Laws of 1951, reapportioned both houses of the Legislature and became known as the "Rosenberry Act". The Rosenberry Act was the first full state-wide reapportionment since 1921. In addition, it was probably the first state-wide legislative apportionment since the Cunningham litigation of 1892 that was entirely based on the premise of making legislative districts as equal as possible "according to the number of inhabitants." Under the act, Milwaukee County gained 4 Assemblymen, Dane County gained 2, and Brown, Eau Claire, Rock, Winnebago and Wood Counties each gained 1 Assemblyman. Among the multi-Assembly district counties, only Grant County lost representation (from 2 to 1). The Rosenberry Act created only one Senate district consisting of two Assembly districts (the 16th, rural Dane County). Senate districts 19 (Winnebago and Calumet) and 24 (Clark, Portage and Wood) each contained 4 Assembly districts; all other Senate districts contained 3 Assembly districts each.

The Rosenberry Act consisted of 4 sections:

Sections 1 and 2 apportioned the Senate and Assembly "according to the number of inhabitants" on the basis of the 1950 Census of Population, in conformity with the requirements of Article IV of the Wisconsin Constitution.

Section 3, which was made part of the proposal by amendments sponsored by Senators Leverich and Kaftan and by Assemblyman Ludvigsen, provided for an advisory referendum to be held in connection with the general election in November 1952 on the question: whether apportionment of either house of the Wisconsin Legislature should be based on area as well as on population. Further, Section 3 provided Sections 1 and 2 of the act would become operative on January 1, 1954, only if the voters rejected the area apportionment concept in the referendum.

Section 4 of the act was a nonseverability clause stating that the entire act should become inoperative if the courts should hold any one of the preceding 3 sections invalid.

Chapter 669, Laws of 1951, provided that until December 31, 1953, the wards of Milwaukee referred to in the apportionment sections of the Wisconsin Statutes were the wards created by the common council in 1931, and that within 90 days after January 1, 1954, and thereafter following each decennial census, the Common Council of the City of Milwaukee readjust the wards to create wards as nearly equal in population, and as compact in area, as possible.

1951 Senate Joint Resolution 50 proposed to amend the Wisconsin Constitution so as to provide for Senate apportionment on an "area and population" basis (the relation was not specified) and to permit Senate districting independent of Assembly district boundaries.

1952

The Rosenberry Act was challenged in State ex rel. Broughton v. Zimmerman, 261 Wis. 398, on the grounds that the Legislature, having once apportioned the Senate and Assembly in accordance with the latest census, had exhausted its apportionment power and could not make the act dependent upon the outcome of a referendum. In its decision of April 8, 1952, the Wisconsin Supreme Court disagreed with the challenge, holding:

(1) "While the Legislature may not delegate its power to make a law, it can make a law to become operative on the happening of a certain contingency ... on which the law makes or intends to make its own actions depend."

(2) On the postponement of the effective date of Chap. 728, Laws of 1951 (January 1, 1954) the court said that the duty of the Legislature to apportion "is a continuing one so that, if the legislature fails to reapportion at its first session after the census, it may do so at a subsequent session."

In the election of November 4, 1952, the people of Wisconsin voted 753,092 to 689,615 against the proposition to amend the Constitution "to provide for the establishment of either senate or assembly district on an area as well as a population basis". Thus, by the provision of its Section 3 the Rosenberry Act, as the result of the referendum, was slated to become effective January 1, 1954.

1953

Despite the outcome of the 1952 referendum on the area representation question, the Legislature by February 18 completed second consideration approval of the constitutional amendment started in 1951 (1953 Assembly Joint Resolution 7) to provide for Senate districting based on a formula including both area and population factors. The amendment was submitted to the people in the spring election. On April 7, with a voter turn-out considerably below that of the preceding November election, the constitutional amendment was ratified with 433,043 votes "yes" to 406,133 votes "no".

Chapter 242, Laws of 1953 (approved June 3), redistricted the Senate based on a 30% area, 70% population formula. The legislation became known as the "Rogan Act" after Senator Paul J. Rogan who had requested drafting of the measure. The act was designed to take effect on January 1, 1954, together with the Rosenberry Act, and to supersede the Senate districting provisions of the Rosenberry Act.

Chapter 550, Laws of 1953 (approved July 14), by its title was identified as a corrective measure designed to eliminate "errors in the apportionment of assemblymen" under the Rosenberry Act. It made changes in the Assembly district descriptions for Brown, Dane, Dodge, Eau Claire, Marathon and Milwaukee Counties.

After the Rogan Act was enacted in implementation of the constitutional amendment, Secretary of State Fred Zimmerman let it be known that he would call the 1954 legislative elections on the basis of the Rosenberry Act, and ignore the Rogan Act. Attorney General Vernon W. Thomson brought an original action in the Wisconsin Supreme Court seeking to force the Secretary of State to apply the Rogan Act as the later law. Deciding the case of State ex rel. Thomson v. Zimmerman (264 Wis. 644) on October 6, the Wisconsin Supreme Court invalidated the ratification of the constitutional amendment as well as the Rogan Act which relied on the constitutional amendment for its validity. The court found that the amendment had covered several issues which were not separately stated in the referendum question, thus denying the people their right to vote on each issue separately. No attempt was made in the Legislature, which began its fall session on October 26, to resubmit the area-factor amendment to the people with a properly worded set of referendum questions; perhaps this inaction was based on frustration over the secondary holding of the Thomson v. Zimmerman case that, even if the constitutional amendment had been validly ratified, the passage and approval of the 1951 Rosenberry Act had exhausted the legislative apportionment powers for the decade of the 1950's.

Chapter 687, Laws of 1953, "repealed" the Rogan Act Senate districting (it had never gone into effect) and corrected the Rosenberry Act so as to describe Senate districts as composed of Assembly districts rather than of wards. It also made corrections in the internal descriptions of 2 Assembly districts.

On December 24, Attorney General Thomson issued an informal reply to Senator Clifford W. Krueger who had questioned the validity of the Rosenberry Act's Senate districts because the people of Dunn, Lincoln and Portage Counties would not be able to vote for a state Senator from 1950 to 1956. Citing the first Cunningham case of 1892 (81 Wis. 440, 531), the Attorney General advised

that the Legislature has absolute power to make Senate districts, even though some electors might be unable to vote for 6 years.

1954

The correctional nature of Chapter 550, Laws of 1953, particularly as it applied to Brown County, was challenged in State ex rel. Smith v. Zimmerman, 266 Wis. 307, decided on March 2. The Wisconsin Supreme Court agreed that the act had indeed changed the boundaries of the 3 Assembly districts in Brown County as established under the Rosenberry Act. This, it held, was in violation of the one-apportionment-per-federal-census interpretation of the Wisconsin Constitution established in the Thomson v. Zimmerman decision, and the Brown County provisions of Chapter 550 were held invalid.

1955

Although no attention was given to Congressional redistricting of Wisconsin during the 1950's, 1955 Assembly Bill 522 was passed to revise the line separating the Fourth and Fifth Congressional Districts in Milwaukee County. The press alleged that the bill was designed to alter the political balance between the 2 districts. The bill was vetoed by Governor Kohler after the Legislature adjourned sine die; in a press release the Governor recommended that the 1957 Legislature should address itself to a state-wide revision of Congressional districts.

Chapter 665, Laws of 1955, corrected the statutory descriptions of legislative districts to reconcile these with the Smith v. Zimmerman decision and to reflect recent municipal annexations, incorporations and ward line changes.

1956

When the City of Madison annexed a substantial area on its west side the Secretary of State, Mrs. Glenn M. Wise, asked for an Attorney General's ruling on the effect of the annexation on the 26th Senate District, described as consisting of "the city of Madison". Attorney General Thomson issued a formal opinion (45 O.A.G. 276) advised that an annexation by a political subdivision of the state "cannot work any alteration of the boundaries of the assembly and senate districts" since not even the Legislature itself could "alter the boundaries of assembly and senate districts as laid out in" the Rosenberry Act "until after the next decennial census." The decisions in 1953 (Thomson v. Zimmerman) and 1954 (Smith v. Zimmerman) had clearly overruled the 1861 holding of the Slauson case that the Constitution did not impliedly prohibit incidental changes in the boundaries of legislative districts as the result of changes in the boundaries of the towns, cities or counties of which the legislative district were composed.

1957

The same issue was raised once more in Fish Creek Park Company v. Bayside, 274 Wis. 533. The complaint sought to invalidate a Village of Bayside annexation of lands in Ozaukee County, across Assembly and Senate district lines. The court disagreed; the annexed area became part of the village only for purposes for which the village could properly annex it, and did not change the lines of legislative districts.

Chapter 483, Laws of 1957, was the first truly "modern" correction of the internal description of Assembly districts. When the City of La Crosse changed its ward lines, the act retained the description of the 2 districts as stated in the 1951 Rosenberry Act but specified that it referred to wards "as such wards existed on August 17, 1951".

1959

1959 Senate Joint Resolution 12 began the constitutional amendment process to remove the "Indians not taxed" exclusion from the "number of inhabitants" requirement of the Wisconsin Constitution.

Chapters 98 (Congressional) and 100 (Senate and Assembly), Laws of 1959, revised district descriptions to reflect municipal annexations and incorporations.

Chapter 259, Laws of 1959, created Wisconsin's 72nd county, Menominee. Conforming to long-established practice and constitutional interpretation, the law stated that the 2 parts of Menominee County would remain parts of the Congressional, Senate and Assembly districts to which they were then assigned.

1959 Senate Joint Resolution 94 directed the Wisconsin Joint Legislative Council to create a committee on reapportionment. The committee was created by the council to consist of 4 Senators, 6 Assemblymen, and 5 public members. It was instructed to "prepare 2 separate bills, one relating to reapportionment of legislative districts and the other relating to reapportionment of congressional districts."

1960

Wisconsin's population, as shown by the 18th Census of Population, now numbered 3,952,765. The increase during the decade of the 1950's — 517,202 — was the largest absolute increase ever experienced by the state (the relative increase was, however, only 15.1%). Of the state's total population, 63.8% were now classed as urban. As the first census of population relying entirely on computers for its computations, the 1960 Census had a particularly slow publication schedule. The first printed "preliminary report" for Wisconsin by minor civil divisions — Series PC (P1)/51 — was received on September 26; the raw data for Milwaukee block statistics (not yet in printed form) were received by the City of Milwaukee Planning Commission on December 25 and had to be translated into the populations of existing wards before ward line revision could be started.

1961

Assemblyman Glen E. Pommerehne (Rep., Wauwatosa) offered 1961 Assembly Bill 578 which retained Milwaukee County at 24 Assembly districts. The Assembly Committee on Rules, at the request of Assemblymen Allen J. Flannigan and Wilfred Schuele, introduced 1961 Assembly Bill 645 which was based on the work of the Legislative Council's Reapportionment Committee (though not approved by the council because the work was completed too late) which would have increased the Milwaukee County Assembly delegation to 26 members, and 1961 Assembly Bill 647, relating to Congressional districts. On January 12, 1962, the Wisconsin Legislature recessed under 1961 Assembly Joint Resolution 147 until January 9, 1963 (one hour prior to the convening of the 1963 Legislature) without enacting any of these apportionment bills.

Chapter 679, Laws of 1961, reapportioned Menominee County so that all of the county would be in the same Assembly, Senate and Congressional district with neighboring Shawano County.

1962

Attorney General John W. Reynolds brought suit in the Wisconsin Supreme Court to prevent Secretary of State Robert C. Zimmerman from conducting the 1962 legislative elections under the existing apportionment. In March, the court dismissed the petition subject to the proviso that it could be renewed after June 1, 1963 (reported in 22 Wis. 2d 544, 549). On March 26, the United States Supreme Court decided the Tennessee Case of Baker v. Carr (369 U.S. 186; 82 S.Ct. 691), holding that legislative apportionment was a justiciable issue, that the citizen's right to equal representation was protected against "invidious discrimination" under the equal protection clause of the XIVth Amendment to the United States Constitution, and that legislative election districts had to be substantially equal in population subject to such minor deviations from the average as flowed from a rational design. The Attorney General renewed his suit in the U.S. District Court for the Western District of Wisconsin, but received a preliminary setback when he was told by the court, on May 26, that the State of Wisconsin was not a "person" whose rights are protected by the XIVth Amendment (205 F.Supp. 673). The court suggested that the Attorney General could amend his complaint to include 5 citizens as parties plaintiff, and suggested that the Legislature should reconvene meanwhile to perform its constitutional reapportionment duty.

Governor Gaylord Nelson called a special reapportionment session to begin on June 18. When the legislators assembled in the Capitol on that date, a majority of the members of each house signed a petition to reconvene the 1961 Session under the terms of the adjournment resolution, 1961 Assembly Joint Resolution 147. For the first time, the Wisconsin Legislature was simultaneously in regular and special session.

At the session, the Legislature considered 4 bills for Congressional redistricting, 5 bills for legislative reapportionment, and 8 joint resolutions proposing amendments to the Wisconsin Constitution relating to reapportionment. Two bills for Congressional redistricting, and one bill for legislative reapportionment, were passed and vetoed: Congressional — 1961 Senate Bills 814 and 817; legislative — 1961 Senate Bill 815. The Legislature tried to repass the legislative apportionment in the form of 1961 Senate Joint Resolution 125,

but the attempt failed in the Assembly. Once more, the Legislature adjourned until January 1963.

Attorney General Reynolds renewed his suit in federal district court. The court appointed Emmert L. Wingert, a former justice of the Wisconsin Supreme Court, as a special master to hold hearings on the issue. On August 14, and based on the master's findings, the court held that the disparities in Wisconsin legislative districts did not amount to invidious discrimination and that, because of the impending 1962 elections, it was impractical to grant any relief at that time. In invited renewal of the suit "after August 1, 1963 if, by that time, the State of Wisconsin has not been redistricted"; Reynolds v. Zimmerman, 209 F.Supp. 183.

1963

State Treasurer Dena A. Smith refused to countersign the Attorney General's vouchers for payment of the expenses in the federal court suit. In State ex rel. Reynolds v. Smith, decided on April 2, 1963 (19 Wis. 2d 577), the Wisconsin Supreme Court reaffirmed that as a matter of Wisconsin law the state was a proper party plaintiff in an apportionment suit, and ordered release of the voucher.

Chapter 63, Laws of 1963, approved May 20, revised Wisconsin's Congressional districts and reduced the population deviation among the state's 10 districts to the then unheard-of close range from minus 3.2% to plus 3.4% of the average district population (395,276). The Milwaukee-Waukesha area was given 3 whole Congressional districts, with the 4th and 5th situated entirely in Milwaukee County, and the 9th consisting of Waukesha County and the northern and northwestern suburban areas of Milwaukee County.

1963 Senate Bill 575, which again provided for only 24 Assembly districts in Milwaukee County, was vetoed by Governor Reynolds; passed by the Senate notwithstanding the Governor's objections, but failed in the Assembly. 1963 Senate Bill 627, offered by Senator Jerris Leonard (Rep. Bayside) on the day after the veto, failed in the house of origin. Both houses then proceeded to re-pass the vetoed legislative apportionment in the form of 1963 Senate Joint Resolution 74.

1963 Senate Bill 677, designed only to shift the dividing line between the Assembly districts in La Crosse County (it was, therefor, an amendment to the 1951 Rosenberry apportionment), was also vetoed.

Governor Reynolds renewed the apportionment litigation before the Supreme Court of Wisconsin (alleging that the new Attorney General, George Thompson, was not prepared to commence the suit). He sought to enjoin Secretary of State Robert Zimmerman from conducting the 1964 legislative elections on the basis of the Rosenberry apportionment of 1951, to be held instead under an apportionment plan to be promulgated by the Wisconsin Supreme Court or, on the alternative, at large. The Secretary of State replied that he intended to conduct the elections based on the provisions of 1963 Senate Joint Resolution 74 or (if that be invalid) from the existing districts unless otherwise directed by the court.

1964

In State ex rel. Reynolds v. Zimmerman (22 Wis. 2d 544), decided on February 28, the Wisconsin Supreme Court held that Wisconsin legislative apportionment requires participation by the Governor and, hence, that 1963 Senate Joint Resolution 74 was not a valid apportionment. The court reviewed Wisconsin apportionment law and pointed out that the "county ... town or ward lines" limitation on Assembly district boundaries made perfect population equality impossible. Nevertheless, the court admonished the Legislature to reapportion the legislative districts to achieve as close an approximation to exact population equality as possible. The court set a May 1 deadline for legislative reapportionment and promised that, if the deadline was not met, it would itself by May 15 devise an apportionment plan for the conduct of the 1964 legislative elections.

Governor Reynolds pledged publicly to veto any legislative apportionment bill which did not give Milwaukee County 26 Assembly districts. When the Legislature returned on April 13 for its regularly scheduled continuation of the 1963 Session, it again gave the apportionment issue full debate. 1963 Senate Bill 679 was passed, increasing the number of Assembly districts in Milwaukee County from 24 to 25, and reducing the population differences among Assembly districts in several other multi-Assembly district counties. Governor Reynolds, true to his pledge, vetoed the bill 4 days later, and the attempt to override the veto failed in the Senate 20 to 11 (short of the required 2/3 majority). As a parting gesture, the Legislature passed 1963 Senate Joint Resolution 109, instructing the Chief of the Legislative Reference Bureau "to provide such technical assistance as is required by the Wisconsin Supreme Court for legislative apportionment" and to "give precedence to this task over all other tasks" until May 15.

Assisted by the Reference Bureau's maps, statistics and analyses of all legislative apportionment proposals considered by the Legislature since 1960, the Wisconsin Supreme Court on May 14, 1964, promulgated its own "temporary" legislative apportionment plan, to be used for the 1964 legislative elections and thereafter until the enactment of a valid apportionment by the Legislature (none was enacted during the decade of the 1960's). The plan was, for the Assembly, a composite of the many different proposals considered by the Legislature, assigning 25 Assembly districts to Milwaukee County (the proper allocation according to the statistical method of Equal Proportions which is used for Congressional apportionment) and selecting for all other multi-Assembly district counties that plan which would result in the least population deviation among districts within the county. For the Senate, the Supreme Court's plan was largely new and balanced, in the Racine-Kenosha area, a substantial underrepresentation in the Assembly against an intentional overrepresentation in the Senate. The plan, published at 23 Wis. 2d 606, included an explicit "statement of principles" outlining the formula on which the apportionment was based. The formula observed county lines. Undoubtedly it constituted, as required by Baker v. Carr, a "rational design" which, had the plan been enacted 3 years earlier, might have served as a national model for legislative apportionment. Unfortunately, by 1964 nearly every state in the Nation was engaged in apportionment litigation, and on June 15, 1964, the United States Supreme Court issued a series of Reapportionment Decisions which required strict adherence to population equality among districts for each house of a 2-house legislature.

The Reapportionment Decisions, led by the Alabama case of Reynolds v. Sims (377 U.S. 533; 84 S.Ct. 1362), included 2 other cases from Alabama and one case each from Colorado, Delaware, Maryland, New York and Virginia. Based on these cases, the only constitutionally valid approach to legislative apportionment would be an "honest and good faith effort" to reduce to a minimum the population differences among districts by constructing such districts along town, ward (city or village) or even precinct lines if necessary.

1965

In State ex rel. Sonneborn v. Sylvester, decided on January 5 (26 Wis. 2d 43), the Wisconsin Supreme Court held that the constitutional protection of population equality among election districts applied to the election of members of the county board. Until that time, Wisconsin county board members had been elected, one each, from every town, village or ward (or part of a village or ward) in the county. A new system of county-wide equal population districting for supervisory elections was enacted as Chapter 20, Laws of 1965.

1968

The United States Supreme Court, in the Texas case of Avery v. Midland County (390 U.S. 474), held that every elective body of "general" decision-making power must be apportioned on the basis of equal population. "The Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the state."

1969

In the Missouri case of Kirkpatrick v. Preisler (394 U.S. 526) the United States Supreme Court made it clear that the proposed Missouri Congressional districting plan — ranging for the 10 districts from minus 2.84% to plus 3.13% — did not satisfy the "honest and good faith effort" requirement of achieving mathematical equality among districts as long as it was possible — as was shown in the case — to reduce the population differences among the districts by the "simple device of transferring entire political subdivisions of known population between contiguous districts."

1970

On February 25, 1970, the U.S. Supreme Court issued its decision in the case of Hadley v. Junior College District of Metropolitan Kansas City, Mo. (published in 38 U.S. Law Week 4161-67). The case represents the final word, to-date, on equal population apportionment. The majority opinion was written by Justice Hugo L. Black; Justice Stewart and Chief Justice Burger joined in the dissent of Justice Harlan. As stated in the majority opinion:

This case involves the extent to which the Fourteenth Amendment and the "one man, one vote" principle applies in the election of local governmental officials.

... We hold that the Fourteenth Amendment requires that the trustees of this junior college district be apportioned in a manner which does not deprive any voter of his right to have his own vote given as much weight, as far as is practicable, as that of any other voter in the junior college district ...

When a court is asked to decide whether a State is required by the [federal] Constitution to give each qualified voter the same power in an election open to all, there is no discernible, valid reason why constitutional distinctions should be drawn on the basis of the purpose of the election. If one person's vote is given less weight through unequal apportionment, his right to equal voting participation is impaired just as much when he votes for a school board member as when he votes for a state legislator. While there are differences in the powers of different officials, the crucial consideration is the right of each qualified voter to participate on an equal footing in the election process. It should be remembered that in cases like this one we are asked by voters to insure that they are given equal treatment, and from their perspective the harm from unequal treatment is the same in any election regardless of the officials selected.

The majority opinion reemphasized the same point several times to assure that there could be no further misreading of the sweeping applicability of the Equal Protection Clause:

... We therefore hold today that as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis which will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.

At the same time, the Supreme Court in the Hadley decision also called attention to the fact that apportionment according to the number of inhabitants aims toward equal representation, rather than sterile map-making with perfect population numbers exactness, as its sole and ultimate goal:

In holding that the guarantee of equal voting strength for each voter applies in all elections of governmental officials, we do not feel that the States will be inhibited in finding ways to insure that legitimate political goals of representation are achieved ... Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation. But once a state has decided to use the process of popular election and once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded.

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